

1

2

3

4

5

6

7

8

UNITED STATES DISTRICT COURT

9

EASTERN DISTRICT OF CALIFORNIA

10

11 JESSE COLLINS,)	1:05-cv-00541-OWW-DLB-HC
)	
12 Petitioner,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATIONS (Doc. 26)
13 v.)	ORDER GRANTING MOTION TO
)	DISMISS (Doc. 16)
14 DERRAL ADAMS, Warden,)	ORDER DISMISSING PETITION
)	FOR WRIT OF HABEAS CORPUS
15 Respondent.)	
	<hr/>	
		ORDER DIRECTING CLERK TO
		ENTER JUDGMENT

16

17

19 Petitioner is a state prisoner proceeding pro se with a
20 Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

21 On June 28, 2006, the Magistrate Judge filed Findings and
22 Recommendations that Respondent's motion to dismiss be GRANTED, and
23 the habeas corpus petition be DISMISSED WITH PREJUDICE for
24 Petitioner's failure to comply with 28 U.S.C. § 2244(d)'s one-year
25 limitation period. These Findings and Recommendations were served
26 on all parties and contained notice that any objections were to be
27 filed within thirty (30) days from the date of service of that
28 order. On July 28, 2006, Petitioner filed a motion to extend time.

1 On August 28, 2006, the court granted Petitioner an additional
2 thirty (30) days within which to respond. On October 4, 2006,
3 Petitioner filed a response to the Findings and Recommendations.
4 On January 3, 2007, pursuant to the Court's order of December 11,
5 2006, Petitioner provided further briefing. (Court Doc. 31.)

6 In his January 3, 2007, briefing, Petitioner states that he
7 has submitted evidence which demonstrates his state of mind during
8 the relevant time period, as is relevant to his claim for equitable
9 tolling based on his medical condition and prescribed medications.
10 As with the previous evidence addressed in the Findings and
11 Recommendations, the current exhibits demonstrate that Petitioner
12 was free from medication and in remission as of April 22, 1999.
13 Further, Petitioner was released from the mental health treatment
14 population on April 22, 2000. Petitioner remained free from the
15 mental health treatment population until March 22, 2001. (Court
16 Doc. 31, at pgs.20, 22, 23.) As stated in the Findings and
17 Recommendations, Petitioner has simply failed to demonstrate that
18 he was unable to file the petition in a timely manner, as there was
19 a substantial period of time in which Petitioner was free from the
20 mental health condition and medication, and Petitioner fails to
21 demonstrate that he acted diligently during this time frame or that
22 there was a "but-for" connection between any alleged mental health
23 condition and the untimely filing of the instant petition.

24 In accordance with the provisions of 28 U.S.C. § 636
25 (b) (1) (C), this Court has conducted a *de novo* review of the case.
26 Having carefully reviewed the entire file, including Petitioner's
27 response, the Court concludes that the Magistrate Judge's Findings
28 and Recommendations are supported by the record and proper

1 analysis. Petitioner's response presents no grounds for
2 questioning the Magistrate Judge's analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The Findings and Recommendations, filed June 28, 2006,
5 are ADOPTED IN FULL;

6 2. Respondent's motion to dismiss, filed January 13, 2006,
7 is GRANTED;

8 3. The habeas corpus petition is DISMISSED WITH PREJUDICE
9 for Petitioner's failure to comply with 28 U.S.C. § 2244(d)'s one-
10 year limitation period; and,

11 4. The Clerk of Court enter judgment.

12 IT IS SO ORDERED.

13 Dated: February 7, 2007
14 emm0d6

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

15
16
17
18
19
20
21
22
23
24
25
26
27
28